

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JOHN STAFFORD, et al.,

Plaintiffs,

-v-

JEWELERS MUTUAL INSURANCE CO.,

Defendant.

Case No. 3:12-cv-050

**Judge Thomas M. Rose
Magistrate Judge Michael R. Merz**

ENTRY AND ORDER GRANTING STAFFORD’S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT (Doc. #29) NOT LATER THAN TEN DAYS FOLLOWING ENTRY OF THIS ORDER; GRANTING JEWELERS NOT LATER THAN FIFTEEN DAYS FOLLOWING THE FILING OF AN AMENDED COMPLAINT TO FILE ANOTHER MOTION FOR JUDGMENT ON THE PLEADINGS AND FINDING THE PENDING MOTION FOR JUDGMENT ON THE PLEADINGS (Doc. #13) AND THE PENDING MOTION FOR PARTIAL SUMMARY JUDGMENT (Doc. #27) MOOT PROVIDED STAFFORD FILES AN AMENDED COMPLAINT

Now before the Court is Plaintiffs John Stafford’s and U.S. Diamond and Gold’s d/b/a Stafford’s (“Stafford’s”) Motion for Leave To File an Amended Complaint. (Doc. #29.) This Motion is now fully briefed and ripe for decision.

Defendant Jewelers Mutual Insurance Co. (“Jewelers”) has filed a Motion for Judgment On the Pleadings (doc. # 13) based upon Stafford’s original Complaint that is fully briefed but not ruled upon by the Court. Stafford has filed a Motion for Partial Summary Judgment (doc. #27) based upon Stafford’s original Complaint that is also fully briefed and not ruled upon by the Court.

Stafford seeks to amend his Complaint to “include additional facts received in discovery, to clarify the issues previously addressed in the original [C]omplaint and to provide

supplemental factual details on which Stafford's original claims are based." Jewelers opposes the filing of Stafford's proposed Amended Complaint because the "proposed amendments are not made in good faith and are futile."

After a responsive pleading has been filed and served, leave of court or the opposing party's written consent is required to amend a pleading. Fed. R. Civ. P. 15(a). In this case, a responsive pleading has been filed and served and Jeweler's has not given written consent to Stafford to amend his Complaint. Therefore, Stafford must obtain leave of this Court to amend his Complaint.

Leave to amend pleadings "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). However, leave to amend a pleading should be denied if the amendment is brought in bad faith, for dilatory purposes, results in an undue delay or prejudice to the opposing party or would be futile. *Colvin v. Caruso*, 605 F.3d 282, 294 (6th Cir. 2010).

Jeweler's makes several arguments regarding the futility of Stafford's proposed claims. However, these arguments can best be addressed in the context of a fully-briefed motion for judgment on the pleadings. Jeweler's also makes several arguments regarding Stafford's bad faith but these arguments are based upon the futility of making the amendments. Therefore, Jeweler's has not shown that Stafford's proposed amendment is brought in bad faith, for dilatory purposes, results in an undue delay, results in prejudice to Jewelers or would be futile recognizing that Jeweler's futility arguments can best be addressed in a motion for judgment on the pleadings.

Stafford's Motion for Leave To Amend is granted. Stafford is given until not later than ten (10) days following entry of this Order to file the proposed amended complaint that was

attached as Exhibit A to his Motion for Leave To File Amended Complaint. Jewelers' pending Motion for Judgment On the Pleadings and Stafford's pending Partial Motion for Summary Judgment will both be rendered moot by the filing of an amended complaint.

Jewelers is given until not later than fifteen (15) days following the filing of Stafford's Amended Complaint to file another motion for judgment on the pleadings. Also, Stafford may file another Partial Motion for Summary Judgment in accordance with the guidelines provided in Fed. R. Civ. P. 56.

DONE and ORDERED in Dayton, Ohio this Twenty-Fourth Day of October, 2012.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record